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10/584,494	03/05/2007	Tomoshige Umeda	292904US0PCT	6287
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
SAYALA, CHHAYA D				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Response to Arguments

Applicant's arguments filed 10/8/09 have been fully considered but they are not persuasive.

As pointed in the Final Office action, the references show:

Suzuki: pet food with diacylglycerol containing oil or fat; pet food contains antioxidants vitamin C, vitamin C esters and natural antioxidants.

Schoenherr: pet food containing diacylglycerol that reduces weight of overweight dogs

Shields, Jr.: addition of antioxidants such as vitamins, minerals (copper and iron) and vitamin C to pet food formulations, addition of inorganic minerals improves vitamin antioxidant stability since iron and copper are pro-oxidants.

Tao: antioxidants inhibit the oxidation of oils and fats and include ascorbic acid and ascorbyl palmitate

Graf: oil-based foods undergo oxidation and to prevent this an ascorbic acid/copper system scavenges oxygen from such foods.

From such disclosure it is clear that

- a. fats or oils containing diglycerides were incorporated in pet foods along with antioxidants such as vitamin C and its esters and natural antioxidants
- b. that pet foods containing diglyceridic fats and oils cause weight loss in dogs
- c. that addition of antioxidants to such fats and oils reduces oxidation and therefore increases the efficacy of such oils and fats by stabilizing them against

rancidity, antioxidants such as vitamin C, ascorbyl palmitate, copper, iron, zinc, cobalt, manganese, etc.

While these claims are to a product, it is well established that when applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art, this cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Also see the discussion of latent properties and additional advantages in MPEP § 2145. Based on this, a reconsideration of the affidavit that has been re-presented is not persuasive and does not establish patentability of these claims because of applicant's discovery of additional properties and advantages for his product claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Art Unit: 1794

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/C. SAYALA/

Primary Examiner, Art Unit 1794